

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DONTAE CRAWLEY,

Plaintiff,

vs.

MICHAEL J. ASTRUE, COMMISSIONER OF  
SOCIAL SECURITY

Defendant.

2:07-cv-00877-RCJ-GWF

**ORDER**

Before the Court are Plaintiff Dontae Crawley's ("Crawley") motion for judicial review of the Commissioner of Social Security's ("Commissioner") denial of Social Security and Supplemental Security Income ("SSI") disability benefits (#3), Crawley's motion to remand (#8), and Crawley's objections to the Report and Recommendation of Magistrate Judge George W. Foley, Jr. (#47, #48). The Court has considered the motions and pleadings on file and any oral argument before the Court. IT IS HEREBY ORDERED that Crawley's motion to remand is *denied*.

**I. FACTS**

**A. The History of Crawley's Application for SSI Benefits**

On May 14, 2004, Crawley submitted claims for Social Security and Supplemental Security Income ("SSI") disability benefits to the Social Security Administration ("SSA"). (AR 67, 74–80). Crawley claimed entitlement to SSI disability benefits based upon a number of disabilities—HIV, high blood pressure, high cholesterol, osteoporosis, and bone loss—that had allegedly disabled him since January 2, 2003. (AR 76). After reviewing the medical evidence, the SSA concluded that Crawley's conditions were not severe enough to prevent him from working. (AR 76). On June 22,

1 2004, the SSA denied Crawley's application. (AR 76). On July 27, 2004, Crawley filed a request  
2 for reconsideration. (AR 84). Upon reviewing the medical evidence, including having Crawley's  
3 claim independently reviewed by a physician and disability examiner employed by the State, the SSA  
4 concluded that the initial denial was proper and that Crawley was capable of performing sedentary  
5 types of work. (AR 85). On February 16, 2005, the SSA denied Crawley's request for  
6 reconsideration. (AR 85–87). On March 22, 2005, Crawley requested a hearing by an ALJ. (AR  
7 88). On August 30, 2005, ALJ Daniel F. Loughry conducted the hearing. (AR 88, 344–77).  
8 Crawley was represented by counsel for the hearing. (AR 67).

9       After holding the hearing and considering all of the evidence, the ALJ concluded that  
10 Crawley was not disabled as defined under the Social Security Act. (AR 67). In Crawley's favor,  
11 the ALJ concluded that Crawley had not engaged in substantial gainful activity at any time relevant  
12 to the ALJ's decision and that Crawley suffered from two severe impairments: HIV infection and  
13 osteopenia/osteoporosis. (AR 69). However, the ALJ made the following conclusions against  
14 Crawley: (1) Crawley did not have an impairment or combination of impairments that meets or  
15 medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1. (AR  
16 70); (2) Crawley's impairments did not sufficiently restrict Crawley; and (3) Crawley had the  
17 residual functional capacity to do the following: lift and carry twenty pounds occasionally and ten  
18 pounds frequently; stand and walk two hours, and sit six hours in an eight-hour workday; occasional  
19 climbing, balancing, stopping, kneeling, crouching, and crawling. (AR 71).

20       On May 23, 2006, represented by counsel, Crawley submitted an appeal of the ALJ's  
21 decision to the SSA Appeals Council. (AR 16–17). Crawley argued that the ALJ's decision was not  
22 supported by substantial evidence. (AR 16). Crawley cited to a number of medical records that he  
23 believes prove that Crawley suffered from impairments that met or equaled the requirements of  
24 14.08I and/or 14.08F. (AR 16). Crawley also argued that the ALJ did not properly consider certain  
25 medical notes that the ALJ allegedly could not read. (AR 16). Crawley also argued that the

1 vocational expert testimony relied upon by the ALJ was unreliable. (AR 17). On August 7, 2006,  
2 the Appeals Counsel denied Crawley's request for review. (AR 18). On May 3, 2007, the Appeals  
3 Counsel provided additional information as to why Crawley's request was denied. (AR 6).

4 **B. The Medical Evidence Underlying the ALJ's Decision**

5 In reaching his conclusion, the ALJ considered medical records from multiple physicians who  
6 had treated or examined Crawley over the years. From January 2000 to June 2005, the University  
7 Medical Center ("UMC") in Las Vegas treated Crawley and measured Crawley's T-cells, viral load,  
8 and testosterone levels. (AR 69, 157–81, 201–13, 217–74, 313–23 ). One UMC physician, Dr. Gary  
9 L. Schroeder, noted that Crawley had tested positive for HIV and directed Crawley to continue taking  
10 his medications. (AR 167). Dr. Schroeder also stated that Crawley had hypertension. (AR 170).  
11 On May 1, 2004, Dr. Schroeder stated that a DEXA scan upon Crawley showed osteoporosis of the  
12 hip and medication was prescribed. (AR 201). Dr. Schroeder further noted that Crawley's blood  
13 pressure was in good control. *See id.* On June 14, 2005, Dr. Schroeder stated that Crawley had the  
14 following conditions: (1) HIV positive; (2) hypertension; (3) osteoporosis; (4) lower back pain; and  
15 (5) had experienced weight loss. (AR 313). During a May 10, 2005 visit, Dr. Schroeder asked  
16 Crawley what physical problems prevented him from working. According to the record, Crawley  
17 stated he did not feel that he had any specific medical problems and that he was able to work. (AR  
18 316). During the hearing before the ALJ, Crawley's attorney asked him about this entry. Crawley  
19 testified that he did not recall representing that he could work and that he did not mean to indicate  
20 to Dr. Schroeder that he could work on an ongoing basis. (AR 366–367).

21 On April 11, 2003, Dr. Rito B. Maningo performed a physical examination of Crawley. (AR  
22 184). Dr. Maningo reported that there was no evidence of kyphosis, scoliosis, or paravertebral  
23 muscle spasms in Crawley's back and spine. (AR 185). Dr. Maningo reported that Crawley's gait,  
24 weight bearing, and posture were normal. *See id.* Dr. Maningo further noted that Crawley's HIV  
25 infection was stable, and that Crawley was being treating for his infection. *See id.* Dr. Maningo also

1 performed a physical residual functional capacity assessment. (AR 187–88). Dr. Maningo stated  
2 that Crawley was capable of lifting and carrying 50 pounds occasionally and 25 pounds frequently.  
3 (AR 187). Crawley did not need an assistive device that was medically necessary for ambulation.  
4 Dr. Maningo also stated that Crawley had the ability to stand and/or walk about 6 hours in an 8-hour  
5 workday and to sit for 6 hours in an 8-hour workday with standard breaks and lunch period to  
6 provide sufficient relief for Crawley to alternate standing and sitting. *See id.* Dr. Maningo also  
7 stated that Crawley had the postural capacity to frequently climb ramps and ladders, balance,  
8 stoop/bend, kneel, crouch/squat, and crawl. *See id.* Crawley was not limited in reaching, fingering,  
9 handling objects, hearing, seeing, speaking, and traveling. (AR 188). Dr. Maningo also stated that  
10 Crawley did not have any environmental limitations. *See id.*

11 On April 21, 2003, a state agency physician, Dr. George Bruce Nickles, performed a physical  
12 residual functional capacity assessment of Crawley. (AR 189–96). Dr. Nickles stated that Crawley  
13 was capable of lifting and carrying 50 pounds occasionally and 25 pounds frequently. (AR 190).  
14 Dr. Nickles also concluded that Crawley had the ability to stand and/or walk about 6 hours in an 8-  
15 hour workday, and that Crawley had the ability to sit for 6 hours in an 8-hour workday. *See id.* Dr.  
16 Nickles also stated that Crawley had the unlimited ability to push and/or pull. *See id.* Postural,  
17 manipulative, visual, communicative, and environmental limitations were not established. (AR  
18 191–93). Dr. Nickles stated that Crawley’s symptoms were attributable to a medically determinable  
19 impairment, and the severity or duration of the symptoms was disproportionate to the expected  
20 severity or expected duration on the basis of Crawley’s medically determinable impairment. (AR  
21 194).

22 On May 13, 2004, Dr. Ian Haycocks performed an initial DXA bone density test on Crawley.  
23 (AR 216). Dr. Haycocks concluded that Crawley’s bone density test in the lumbar spine was  
24 diagnostic of osteoporosis, and that Crawley’s bone density test in the proximal femur was  
25 diagnostic of osteopenia; borderline osteoporosis. *See id.*

1 On February 14, 2005, a state agency physician, Dr. Julius Villaflor, performed a physical  
2 residual functional capacity assessment of Crawley. (AR 305–312). Dr. Villaflor stated that  
3 Crawley was capable of lifting and carrying 20 pounds occasionally and 10 pounds frequently. (AR  
4 306). Dr. Villaflor also concluded that Crawley had the ability to stand and/or walk about 2 hours  
5 in an 8-hour workday, and the ability to sit for 6 hours in an 8-hour workday. *See id.* Dr. Villaflor  
6 also stated that Crawley had the unlimited ability to push and/or pull. *See id.* As to Crawley’s  
7 postural limitations, the physician noted that Crawley could (1) occasionally climb ramps or stairs,  
8 kneel, and crawl; (2) frequently balance, stoop, and crouch; and (3) never climb ladders, ropes, or  
9 scaffolds. (AR 307). Dr. Villaflor also stated that manipulative, visual, and communicative  
10 limitations were not established. (AR 308-09). As to Crawley’s environmental limitations, the  
11 physician stated that Crawley should avoid concentrated exposure to extreme cold, extreme heat,  
12 wetness, humidity, fumes, odors, dusts, gases, poor ventilation, and hazards. (AR 309). Dr. Villaflor  
13 stated that Crawley’s symptoms were attributable to a medically determinable impairment, and that  
14 the severity or duration of the symptoms was disproportionate to the expected severity or expected  
15 duration on the basis of the Crawley’s medically determinable impairment. (AR 310). Dr. Villaflor  
16 noted that his residual functional capacity findings were different from those made by Dr. Maningo  
17 in 2003. In this regard, Dr. Villaflor stated that Dr. Maningo’s findings were consistent with medium  
18 work. Dr. Villaflor stated that his residual functional capacity report was done in the context of the  
19 overall records and in the context of the need to maintain a 40 hour per week work schedule. (AR  
20 311).

21 On June 20, 2005, Dr. Carl Recine evaluated an X-ray of Crawley’s spine. (AR 331–33).  
22 Dr. Recine stated: “Five routine views show normal vertebral body alignment and well maintained  
23 interspaces throughout. No significant degenerative or destructive lesions were noted. There is no  
24 evidence of bony injury. There is no evidence of spondylolysis or other significant congenital  
25 anomalies. The adjacent soft tissue structures are normal.” (AR 333).

1           **C.       Testimony Heard by the ALJ**

2           At the August 30, 2005 hearing, Crawley testified that he was HIV positive and had  
3 osteoporosis. (AR 347). Crawley testified that his HIV and/or osteoporosis prevented him from  
4 playing basketball and tennis. (AR 348). He stated that he was diagnosed with HIV in 1995. *See*  
5 *id.* Crawley further testified that he had diarrhea, weakness, headaches, fever, continual weight loss,  
6 breathing problems, persistent coughing, chest pain and numbness in his hands and feet. (AR 349).  
7 Crawley testified that he had a change in taste, problems with memory and coordination or dizziness,  
8 vomiting, and nausea. *Id.* The ALJ noted at the hearing that Crawley's T-cells had increased and  
9 the viral load has decreased. (AR 350). The ALJ further noted that in July 2003, Crawley had an  
10 excellent T-cell count, which was a reason why Crawley has not progressed to AIDS. *See id.*  
11 Crawley testified that he had surgery for his hemorrhoids in July or August 2004. *See id.* He stated  
12 that he had been diagnosed with high blood pressure and high cholesterol since taking medications,  
13 and that he did not know if the HIV or the medications were causing these symptoms. *See id.*

14           Dr. Robin Generaux, vocational expert ("VE"), testified at the hearing that Crawley's past  
15 work as a night auditor and revenue manager are both sedentary work. (AR 373). The ALJ  
16 hypothetically asked Dr. Generaux if someone who had the ability to lift 20 pounds occasionally and  
17 10 pounds frequently, stand and walk 2 hours in an 8-hour day, and sit for 6 hours, could perform  
18 the job of night auditor or revenue manager. Dr. Generaux testified that the person would be able  
19 to perform both jobs. (AR 374). The ALJ further asked Dr. Generaux to assume that the same  
20 person's concentration was impaired to the extent that he was limited to unskilled work. He then  
21 asked whether there were available unskilled jobs that this person could perform with those  
22 additional limitations. *See id.* Dr. Generaux testified that the person could perform the duties of a  
23 cashier, either I or II, which is sedentary work. *See id.* Dr. Generaux testified that under the  
24 sedentary work category, there are cashier and order clerk positions available in both the national  
25 economy and the Las Vegas, Nevada area. (AR 375).

On August 7, 2008, Magistrate Judge George Foley, Jr. (“Judge Foley”) issued a Report and Recommendation (“Report”) advising this Court to uphold the Commissioner or ALJ’s decision and to deny Crawley’s motion to remand. (#47). Crawley has objected to the Report. (#48).

## **II. PRO SE STANDARD**

Allegations by *pro se* petitioners, “however inartfully pleaded,” are held “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Thus, where a plaintiff appears *pro se* in a civil rights case, the court must construe the pleadings liberally and afford the plaintiff any benefit of the doubt. *See Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623–24 (9th Cir. 1988). Nonetheless, a *pro se* plaintiff is not entirely immune from the civil rules of procedure. Although the Court must construe the pleadings liberally, “[p]ro se litigants must follow the same rules of procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). *See also, Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“Although we construe pleadings liberally in their favor, pro se litigants are bound by the rules of procedure.”); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) (“[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record.”).

## **III. STANDARD OF REVIEW**

### **A. Review of Judge Foley’s Report**

A district court has jurisdiction to review the report and recommendation on dispositive pretrial motions. Fed. R. Civ. P. 72(b). “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made in accordance with this rule.” *Id.*; *see also* 28 U.S.C. § 636(b)(1)©. “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)©. It is “clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*,

1 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original); *see also* 28 U.S.C. § 636(b)(1)  
2 (“the court shall make a *de novo* determination of those portions of the [report and recommendation]  
3 to which objection is made.”).

#### 4 **B. Review of the ALJ’s Decision**

5 When the Appeals Council denied Crawley’s request for review of the ALJ’s decision, the  
6 ALJ’s decision became the final decision of the Commissioner. Pursuant to 42 U.S.C. § 405(g), this  
7 Court has authority to review the Commissioner’s decision to deny benefits. The decision will be  
8 disturbed only if it is not supported by substantial evidence or if it is based upon the application of  
9 improper legal standards. *See Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*  
10 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

11 In this context, the term “substantial evidence” means “more than a mere scintilla but less  
12 than a preponderance—it is such relevant evidence that a reasonable mind might accept as adequate  
13 to support the conclusion.” *Moncada*, 60 F.3d at 523; *see also Drouin*, 966 F.2d at 1257. When  
14 determining whether substantial evidence exists to support the Commissioner’s decision, the Court  
15 examines the administrative record as a whole, considering adverse as well as supporting evidence.  
16 *Drouin*, 966 F.2d at 1257; *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). Where the  
17 evidence is susceptible to more than one rational interpretation, the Court must defer to the decision  
18 of the Commissioner. *Moncada*, 60 F.3d at 523; *Drouin*, 966 F.2d at 1258.

#### 19 **IV. THE EVALUATION OF DISABILITY**

20 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable  
21 to engage in any substantial gainful activity owing to a physical or mental impairment that is  
22 expected to result in death or which has lasted or is expected to last for a continuous period of at  
23 least twelve months. 42 U.S.C. § 423(d)(1)(A); *Drouin*, 966 F.2d at 1257.



1           **A.       The Five-Step Evaluation Process**

2           The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing  
3 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; *Osenbrock v. Apfel*, 240 F.3d 1157,  
4 1162 (9th Cir. 2001). In the first step, the Commissioner must determine whether the claimant is  
5 currently engaged in substantial gainful activity; if so, the claimant is not disabled and the claim is  
6 denied. *Id.* § 416.920(a)(4)(I) & (b). If the claimant is not currently engaged in substantial gainful  
7 activity, the second step requires the Commissioner to determine whether the claimant has a “severe”  
8 impairment or combination of impairments significantly limiting her ability to do basic work  
9 activities; if not, a finding of non-disability is made and the claim is denied. *Id.* § 416.920(a)(4)(ii)  
10 & ©. If the claimant has a “severe” impairment or combination of impairments, the third step  
11 requires the Commissioner to determine whether the impairment or combination of impairments  
12 meets or equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R., Part  
13 404, Subpart P, Appendix 1; if so, disability is conclusively presumed and benefits are awarded. *Id.*  
14 § 416.920(a)(4)(iii) & ©.

15           If the claimant’s impairment or combination of impairments does not meet or equal an  
16 impairment in the Listing, the fourth step requires the Commissioner to determine whether the  
17 claimant has sufficient “residual functional capacity” to perform her past work; if so, the claimant  
18 is not disabled and the claim is denied. *Id.* § 416.920(a)(4)(iv) & (e). The claimant has the burden  
19 of proving that she is unable to perform past relevant work. *Drouin*, 966 F.2d at 1257. If the  
20 claimant meets this burden, a prima facie case of disability is established. The Commissioner then  
21 bears the burden of establishing that the claimant is not disabled because she can perform other  
22 substantial gainful work available in the national economy. *See Valencia v. Heckler*, 751 F.2d 1082,  
23 1086–87 (9th Cir. 1985). The determination of this issue comprises the fifth and final step in the  
24 sequential analysis. *See id.*

1           **B.       The ALJ's Application of the Five-Step Process**

2           In this case, at step one, the ALJ found that Crawley had not engaged in any substantial  
3 gainful activity since the alleged onset date of the disability. (AR 69). At step two, the ALJ  
4 concluded that Crawley had the following "severe" impairments: HIV infection and  
5 osteopenia/osteoporosis. *See id.* At step three, the ALJ determined that Crawley's impairments do  
6 not meet or equal any of the impairments in the Listing. (AR 70). At step four, the ALJ found that  
7 Crawley retained the residual functional capacity to perform a range of sedentary work. (AR 71).  
8 Specifically, the ALJ found that Crawley "can lift and carry 20 pounds occasionally and 10 pounds  
9 frequently, stand and walk 2 hours and sit 6 hours in an 8-hour workday . . . is limited to occasional  
10 climbing, but no ladders, scaffolds or ropes and occasional balancing, stooping, kneeling, crouching  
11 and crawling." (*Id.*). The ALJ further concluded that Crawley was capable of performing his past  
12 relevant work. (AR 72). At step five, the ALJ found that there are a significant number of jobs in  
13 the national and local economy that Crawley is capable of performing. (AR 72). Accordingly, the  
14 ALJ determined that Crawley is not disabled under the terms of the Social Security Act. (*See id.*).

15           **V.       THE ALJ'S DECISION**

16           Crawley contends that the ALJ: (1) failed to base his step three finding upon substantial  
17 evidence and that he has conditions that meet portions of the Listing under 14.08F and 14.08I; (2)  
18 improperly disregarded a handwritten medical record at Exhibit 10F; and (3) relied upon unreliable  
19 vocational expert testimony for the ALJ's fourth step analysis.

20           **A.       Step Three Analysis**

21           At step three in the sequential evaluation process, the ALJ must determine whether a  
22 claimant's impairment meets or equals an impairment contained in the Listings. 20 C.F.R. §  
23 404.1520(d). "The third step requires a determination of whether the impairment meets the duration  
24 requirement and the Listings." *Benitez v. Callahan*, 121 F.3d 714, at \*2 (9th Cir. 1997) (citation  
25 omitted). *See also*, 20 C.F.R. §§ 416.920 (stating that the impairment must meet or equal one of the

1 Listings and the duration requirement). To meet a listed impairment, the claimant “must have a  
2 medically determinable impairment [ ] that satisfies all of the criteria in the listing.” 20 C.F.R. §  
3 404.1525(d). If the claimant’s impairment does not meet the Listing’s criteria, it may still equal the  
4 Listing if the claimant establishes symptoms, signs, and laboratory findings “at least equal in severity  
5 and duration to the criteria of any listed impairment.” 20 C.F.R. § 1526(a).

6 The ALJ determined that Crawley’s HIV infection did not reach the level of severity to meet  
7 or medically equal the requirement of Listing 14.08. (AR 70). The ALJ determined that Crawley  
8 did not suffer from significant bacterial, fungal, protozoan or helminthic or viral infections pursuant  
9 to Listing 14.08. *See id.* The ALJ also determined that Crawley did not have any neurological  
10 abnormalities because Crawley did not experience cognitive or motor dysfunction caused by the HIV  
11 infection. *See id.* The ALJ further determined that Crawley’s back disorders did not meet or  
12 medically equal one of the listed impairments. *See id.* The ALJ noted that there was no evidence  
13 that demonstrated significant limitations in Crawley’s ability to stand, walk or sit for long periods  
14 of time and he was able to perform activities of daily living. *See id.*

15 **1. Section 14.08F**

16 The regulations provide in relevant part that “[a]ny individual with HIV infection, including  
17 one with a diagnosis of acquired immune deficiency syndrome (AIDS), may be found disabled under  
18 14.08 if his or her impairment meets the criteria in that listing or is medically equivalent to the  
19 criteria in that listing.” 20 C.F.R. § 404, Subpt. P, App. 1, § 14.00(F). Listing 14.08F states in  
20 relevant part that the claimant must have “conditions of the skin or mucous membranes with  
21 extensive fungating or ulcerating lesions not responding to treatment (e.g., dermatological conditions  
22 such as eczema or psoriasis, vulvovaginal or other mucosal candida, condyloma caused by human  
23 papillomavirus, genital ulcerative disease).” 20 C.F.R. § 404, Subpt. P, App. 1., § 14.08F. The  
24 record clearly demonstrates that Crawley has suffered from the required conditions of the skin or  
25 mucous membranes. Crawley’s medical records reflect a diagnosis of lesions and condyloma.

1           Nonetheless, this condition must have lasted or be expected to last for a continuous period  
2 of 12 months. *See* 20 C.F.R. §§ 404.1525(c)(4), 416.925(c)(4). Claimants with impairments of  
3 insufficient duration are not disabled. On two occasions, Dr. Schroeder stated that Crawley had  
4 rectal condyloma. First, on May 1, 2004, Dr. Schroeder noted that Crawley had rectal condyloma  
5 in which Crawley had “numerous areas of prolapsing mucosa and a center area erythematous with  
6 ‘cauliflowery’ legion.” (AR 201). Dr. Schroeder further noted that he prescribed Aldara cream and  
7 requested that Crawley return for a follow-up evaluation. *Id.* In Dr. Schroeder’s June 2, 2004 report,  
8 he stated that Crawley had “severe rectal lesions, verrucous exophytic lesions.” (AR 322). Dr.  
9 Schroeder ruled out “malignancy versus anal condyloma.” *Id.* Dr. Schroeder further stated that  
10 Crawley should be “referred to the colorectal surgeon for resection and excisional biopsy and  
11 treatment.” *Id.*

12           On June 15, 2004, Dr. J. Dylan Curry examined Crawley and noted that Crawley had  
13 “excoriated external hemorrhoids which are not actively bleeding, but which are present.” (AR 324).  
14 Dr. Curry further noted that Crawley may possibly have anal condylomata. (AR 325). On June 17,  
15 2004, UMC personnel noted that Crawley was referred for colorectal surgery for rectal lesions. (AR  
16 275). The medical records of Dr. Schroeder, Dr. Curry, and UMC medical personnel indicate that  
17 Crawley’s rectal lesions and condyloma occurred between May 1, 2004 to June 17, 2004. Following  
18 Dr. Curry’s surgical treatment, Crawley’s subsequent medical reports do not indicate that he  
19 continued to suffer from lesions and condyloma. Based on the medical records, it does not appear  
20 that Crawley’s lesions and condyloma failed to respond to treatment or that these conditions were  
21 continuous over a period of twelve months. Therefore, Crawley’s conditions do not meet the  
22 severity required by § 14.08F. Crawley has failed to produce evidence to contradict this conclusion.

## 23           **2.       Section 14.08I**

24           Plaintiff also contends that the ALJ’s finding that Crawley was not disabled pursuant to  
25

1 Listing 14.08I is not supported by substantial evidence. Listing 14.08I states:

2 HIV wasting syndrome, characterized by involuntary weight loss of  
3 10 percent or more of baseline (or other significant involuntary  
4 weight loss, as described in 14.00D2) and, in the absence of a  
5 concurrent illness that could explain the findings, either:

- 6 1. Chronic diarrhea with two or more loose stools daily lasting  
7 for 1 month or longer; or
- 8 2. Chronic weakness and documented fever greater than 38° C  
9 (100.4° F) for the majority of 1 month or longer.

10 20 C.F.R. § 404, Subpt. P, App. 1., § 14.08I.

11 Crawley stated that he experienced involuntary weight loss of ten percent or more, and  
12 therefore, he met the requirements for Listing 14.08. There is evidence of Crawley's weight loss of  
13 ten percent or more. On January 9, 2003, Dr. Schroeder noted that Crawley weighed 147 pounds.  
14 (AR 212). On June 7, 2005, Dr. Schroeder noted that Crawley weighed 124 pounds. (AR 314). In  
15 about a two and half year period, Crawley had weight loss of ten percent or more.

16 In addition, Crawley must have met either the chronic diarrhea or chronic weakness  
17 requirements. Crawley testified at the August 20, 2005 hearing that he continued to have severe  
18 diarrhea, that he had weakness, and sometimes headaches and fever. Dr. Schroeder, who saw  
19 Crawley on a regular basis, did not discuss a specific cause(s) for Crawley's weight loss. His records  
20 do not indicate that Crawley complained of chronic diarrhea or chronic weakness. Dr. Maningo  
21 noted in his April 11, 2003 report that Crawley had occasional episodes of diarrhea. (AR 183). The  
22 medical reports therefore support the conclusion that Crawley had occasional or intermittent  
23 diarrhea, but do not show that he suffered from chronic diarrhea with two or more loose stools daily  
24 lasting for one month or longer. Nor do the records indicate that Plaintiff had chronic weakness and  
25 documented fever greater than 38° C (100.4° F) for the majority of one month or longer. Where the  
evidence is susceptible to more than one rational interpretation, the Court must defer to the decision

1 of the Commissioner. *Moncada*, 60 F.3d at 523; *Drouin*, 966 F.2d at 1258. The records suggest that  
2 neither Crawley's diarrhea or weakness rose to the level of being chronic.

3 Therefore, viewing the medical evidence in its entirety, the Court finds that substantial  
4 evidence supports the ALJ's or Commissioner's determination that Crawley's HIV infection did not  
5 reach the level of severity to meet or medically equal the requirement of Listing 14.08F and Listing  
6 14.08I of the Appendix.

7 **B. Handwritten Medical Record**

8 Crawley argues that because the ALJ stated he was having difficulty reading and/or was  
9 unable to read the handwritten medical record at Exhibit 10F (AR 290–292; AR 350–351), he should  
10 have called a medical expert to assist him at the August 30, 2005 hearing. (AR 16). The disputed  
11 records are handwritten notes dated November 3 and 19, 2004. In response to Crawley's argument,  
12 the SSA Appeals Council noted that the ALJ considered all of the medical evidence. (AR 6). The  
13 SSA Appeals Council further noted that “while a few of the words in the notes in Exhibit 10F may  
14 be undecipherable, the major portion of the notes can be understood.” *Id.*

15 Both the ALJ and Crawley's attorney discussed the 10F exhibit briefly during the hearing.  
16 (AF 355–357). Crawley's attorney brought the 10F notes to the ALJ's decision to support Crawley's  
17 weight loss. However, Crawley's significant weight loss is not in dispute. The ALJ conceded and  
18 the record shows that Crawley's condition has resulted in considerable weight loss. Thus, Crawley's  
19 purpose for introducing the 10F notes was recognized.

20 Regardless of the 10F notes, the record, as a whole, is neither ambiguous nor inadequate to  
21 allow for proper evaluation of the evidence. In addition to these handwritten notes, the record  
22 contains numerous medical records that are indisputably legible and that substantiate the ALJ's  
23 decision. These types of cases reviewing voluminous medical records inevitably have some notes  
24 that are illegible, but that does not mean there is a deficient record. *See Rose v. Astrue*, No.

1 CV06-1885, Slip Copy, 2008 WL 243691, at \*10 (D.Ariz. Jan. 26, 2008 (noting that some medical  
2 notes were illegible).

3 **C. Residual Functional Capacity**

4 The fourth step of the sequential analysis is whether the claimant had the residual functional  
5 capacity to perform his past relevant work. *See* 20 C.F.R. §§ 404.1520(e), 416.920(e). The ALJ  
6 reviews a claimant's residual functional capacity and the physical and mental demands of the work  
7 he or she has previously performed. *Id.* If the ALJ determines the claimant has the residual  
8 functional capacity required to perform his past work, the claimant is found not disabled.

9 In evaluating the fourth step, the ALJ found that Crawley had the residual functional capacity  
10 to lift/carry 20 pounds occasionally and 10 pounds frequently, stand and walk about 2 hours and sit  
11 6 hours in an 8-hour workday. (AR 71–72). This finding was supported by the reports of Dr.  
12 Maningo and by the state agency physicians. There was no contrary medical opinion regarding  
13 Crawley's residual functional capacity. Relying upon Dr. Maningo's assessment, the ALJ concluded  
14 that Crawley was capable of performing at least medium exertional work. (AR 71).

15 Work that a claimant performed within the last 15 years, which lasted long enough for him  
16 or her to learn to do it, and was substantial gainful activity, is considered past relevant work. *See*  
17 20 C.F.R. §§ 404.1565(a), 416.965(a). Crawley testified that he performed work as a revenue  
18 manager, and prior to that, he performed work as a night auditor. (AR 372–73). Also, as required  
19 by the SSA, Crawley provided a list of jobs he performed for the past 15 years on the SSA work  
20 history form.<sup>1</sup> (AR 144).

21 A vocational expert's testimony may constitute substantial evidence of a claimant's ability  
22 to perform past relevant work and work that exists in significant numbers in the national economy  
23

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24 <sup>1</sup>From November 1995 to March 2004, Crawley noted that he had the following job titles: night audit  
25 supervisor, front office manager, auditor, surveyist, front office agent, associate, revenue manager/front office  
associate, credit associate, and media specialist.

1 when the ALJ poses a hypothetical question that accurately describes all of the limitations and  
2 restrictions of the claimant that are supported by the record. *See Tackett v. Apfel*, 180 F.3d 1094,  
3 1101 (9th Cir. 1999); *see also Robbins v. Social Security Administration*, 466 F.3d 880, 886 (9th Cir.  
4 2006) (finding material error where the ALJ posed an incomplete hypothetical question to the  
5 vocational expert which ignored improperly-disregarded testimony suggesting greater limitations).

6 At the hearing, the ALJ posed the following hypothetical question to the vocational expert:

7 Doctor, someone who can lift 20 pounds occasionally and ten pounds frequently,  
8 stand and walk two hours in an eight-hour day, sit for six hours. Perform postural  
9 maneuvers – that is climbing, balancing, stooping, kneeling, crouching, and crawling  
10 – occasionally. No climbing of ladders, scaffolds, and the like. And needs to avoid  
11 concentrated, as opposed to moderate or all exposure, but avoid concentrated  
exposure to extreme cold, extreme heat, wetness, humidity, fumes, odors, dust, gas,  
etcetera, and hazards. Could they do either of those jobs [revenue manager for a  
hotel and night auditor or front desk]?

12 (AR 374). In response, the vocational expert answered in the affirmative. (*See id.*). The  
13 above-quoted hypothetical question posed to the vocational expert accurately set forth Crawley's  
14 residual functional capacity. The ALJ's residual functional capacity finding was fully consistent  
15 with Dr. Maningo, Nickles, and Villaflor's residual functional capacity assessments. The ALJ  
16 included the limitations of the residual functional capacity finding in the hypothetical.

17 Because the ALJ's determination that Crawley was not disabled at the fourth step was not  
18 erroneous, the ALJ was not required to advance to the fifth step. *See* 20 C.F.R. § 404.1520(a)(4) ("if  
19 we can find that you are disabled or not disabled at a step, we make our determination or decision  
20 and we do not go on to the next step."). Usually, if the claimant cannot perform any past work due  
21 to a severe impairment, then the ALJ must move to the fifth step, which requires consideration of  
22 the claimant's residual functional capacity to perform other substantial gainful work in the national  
23 economy in view of claimant's age, education, and work experience. 20 CFR §§ 404.1520(f). Dr.  
24 Generaux testified that an individual with Crawley's limitations could perform a number of  
25 sedentary jobs in the national economy. (AR 72). Dr. Generaux testified that such jobs included



1 that of cashier, which had 7,387 jobs in Nevada and 144,525 jobs nationally; an interviewer, which  
2 had 402 jobs in Nevada and 23,157 jobs nationally; and an order clerk, which had 153 jobs in  
3 Nevada and 257,660 jobs in the national economy. *Id.*

4 Viewing the evidence, as a whole, the Court finds that substantial evidence supports the  
5 ALJ's conclusion that Crawley had the residual functional capacity to perform his past relevant work  
6 as a credit associate, hotel revenue manager, employment services surveyor and hotel auditor.

7 **D. Treating vs. Nontreating Physician**

8 Crawley states that he objects to the Report on the basis that the ALJ relied upon medical  
9 reports from physicians that Crawley has never seen before. (#51).

10 In Social Security cases, courts employ a hierarchy of deference to medical opinions  
11 depending on the nature of the services provided. Courts distinguish among the opinions of three  
12 types of physicians: those who treat the claimant ("treating physicians") and two categories of  
13 "nontreating physicians," namely those who examine but do not treat the claimant ("examining  
14 physicians") and those who neither examine nor treat the claimant ("nonexamining physicians").  
15 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (footnote reference omitted). A treating  
16 physician's opinion is entitled to more weight than an examining physician's opinion, and an  
17 examining physician's opinion is entitled to more weight than a nonexamining physician's opinion.  
18 *See id.* In general, the opinion of a treating physician is entitled to greater weight than that of a  
19 nontreating physician because the treating physician "is employed to cure and has a greater  
20 opportunity to know and observe the patient as an individual." *Morgan v. Commissioner of Social*  
21 *Security Administration*, 169 F.3d 595, 600 (9th Cir. 1999) (citing *Sprague v. Bowen*, 812 F.2d 1226,  
22 1230 (9th Cir. 1987)).

23 In his objection, Crawley fails to clarify the physicians upon which the ALJ relied who  
24 Crawley claims to have never seen. From the record, Dr. Gary L. Schroeder appears to have been  
25 Crawley's primary treating physician. Dr. Carl Recine, Dr. Julius Villaflor, Dr. Ian Haycocks, Dr.

1 George Bruce Nickles, Dr. J. Dylan Curry, and Dr. Rito B. Maningo also submitted assessments on  
2 Crawley's condition. The record is not entirely clear as to which of these physicians were examining  
3 or nonexamining physicians. Nonetheless, even if some of the physicians upon which the ALJ relied  
4 did not actually see Crawley, the opinions of nonexamining physicians, including medical experts,  
5 can constitute substantial evidence upon which an ALJ may rely when they are "supported by other  
6 evidence in the record and are consistent with it." *Morgan*, 169 F.3d at 600. Crawley has not  
7 demonstrated that any of the nonexamining physicians' opinions are unsupported or inconsistent  
8 with the record.

9       Regarding the treating or examining physicians' opinions, they can only be disregarded in  
10 narrow circumstances. If the treating or examining physicians' opinions are not contradicted, they  
11 can be rejected only with clear and convincing reasons. *See Lester v. Chater*, 81 F.3d 821, 830 (9th  
12 Cir. 1995). Crawley has not identified any contradictions of the assessments rendered by Dr.  
13 Schroeder or any of the other examining physicians. Nor has Crawley given clear and convincing  
14 reasons for rejecting any of the treating or examining physicians' opinions that are part of the  
15 administrative record. As a result, the ALJ appropriately relied upon the treating and nontreating  
16 physicians' opinions and medical records. Although greater weight is given to treating physicians,  
17 an ALJ still gives weight to nontreating physicians' opinions. *See, e.g., Ryan v. Comm'r of Soc. Sec.*,  
18 528 F.3d 1194, 1198 (9th Cir. 2008) ("the opinion of an examining physician is entitled to greater  
19 weight than the opinion of a nonexamining physician").

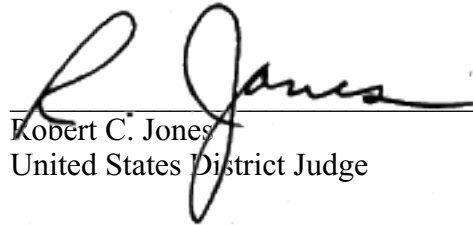
20 ...

21 ...

**CONCLUSION**

The Court finds that the ALJ's decision is supported by substantial evidence. The Court adopts the Report and Recommendation of Magistrate Judge George W. Foley, Jr. IT IS HEREBY ORDERED that Crawley's motion to remand (#8) is *denied*.

DATED: October 24, 2008



Robert C. Jones  
United States District Judge

(bb)